

REMARKS

Reconsideration of the rejections set forth in the Final Office Action mailed May 13, 2008 and entry of the present amendment is requested because Applicants respectfully submit that the Amendment places the application in condition for allowance or in better form for consideration on appeal.

As an initial matter, Applicants appreciate the opportunity to discuss the present application with the Examiner during a telephone interview on September 8, 2008. The present Amendment is based, at least in part, upon the discussion during this interview.

In response to the Final Office Action and the telephone interview with the Examiner, claims 25 and 26 have been amended. Although not discussed during the interview, claims 1 and 5 have been amended to more particularly claim the subject matter of the present application and new dependent claims 74 and 75 have been added. Accordingly, claims 1, 5, 7, 8, 21-31, 74, and 75 are currently pending.

In the Final Office Action, claims 1, 5, 7, 8, and 21-31 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claims of U.S. Patent No. 6,162,233. In addition, claims 1 and 25-31 were rejected under 35 U.S.C. § 112, second paragraph, as indefinite. Finally, claim 1 was rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 4,637,194 (“the Knowles reference”), and claims 5, 7, and 8 were rejected under 35 U.S.C. § 103(a) as unpatentable over the Knowles reference. Because the cited reference fails to disclose, teach, or suggest the subject matter of the present claims, the rejections should be withdrawn.

Turning first to the judicially created doctrine of double patenting rejections, Applicants submit herewith a new Terminal Disclaimer, which includes the Reel/Frame No. (021369/0253) at which the assignment from the inventors has been recorded. Accordingly, the double patenting rejections should now be withdrawn.

With respect to the § 112, second paragraph, rejections, as discussed with the Examiner, claims 25 and 26 have been amended to more particularly recite the claimed fastener and method. Specifically, claims 25 and 26 have been amended to more definitely recite “cutting the fastener between the base and the pointed end to form a new end on the leg.” Accordingly, Applicants request that the § 112, second paragraph, rejections be withdrawn.

Turning to the §§ 102(b) and 103(a) rejections, claims 1 and 5 have been amended to recite that the unformed length dimension or length dimension measured from the base to the initial pointed end is “long enough to extend out of a patient when the base is in anchoring position within the patient’s body.” Support for these amendments may be found in the original specification, for example, in paragraphs [0049] (page 11, lines 4-10) and [0112] (page 19, lines 16-25) of the present application. Further, claims 74 and 75 recite that the unformed length dimension is between ten and twenty inches, which is also supported in the original specification, e.g., in the same passages identified above.

The Knowles reference does not disclose, teach, or suggest fasteners having such lengths. Instead, the Knowles staple is sized to be inserted into a two inch by four inch (2 x 4) piece of wood. For example; the standard nail size for 2” x 4” construction is 16d, which is 3.5 inches long. Thus, the legs of the Knowles staple would not be long enough to extend out of a patient

when the base is in anchoring position within the patient's body, and clearly would not be between ten and twenty inches.

In addition, the Knowles reference fails to disclose, teach, or suggest anything about fasteners *for use in surgery* or *pledgets*, as explained in Applicants' previous response filed on July 14, 2008. As explained in paragraph [0115] of the present application, a pledget is a well known term in the surgical field. A pledget refers to a flexible strip of fabric and the like, through which a fastener, such as a suture or fastener, is inserted before the fastener is delivered through tissue. Please see the attached Exhibit A, which is an excerpt from Answers.com. The pledget is applied to a fastener to provide extra contact area, e.g., to help support tissue through which a fastener is delivered to prevent the fastener from tearing or otherwise damaging the tissue, as can be seen in FIGS. 4 and 5 of the present application.

In direct contrast, the Knowles chord 11 is a 2' x 4' or other standard size wood strip that is stapled to other wood strips to form a wood beam assembly. The chord 11 would be incapable of receiving a fastener therethrough and then being introduced into a patient's body during a surgical procedure. Besides being substantially rigid, the chord 11 is orders of magnitude larger than a pledget, as would be known by those skilled in the art. Thus, the chord 11 is completely different than a pledget, having a completely different size, structure, and purpose. Accordingly, claims 1, 5, and their dependent claims are neither anticipated by nor otherwise obvious over the Knowles reference.

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In view of the foregoing, it is submitted that the claims now presented in this application define patentable subject matter over the cited prior art. Accordingly, reconsideration and allowance of the application is requested.

Respectfully submitted,
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